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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,173	03/06/2002	Michael K. Gunaratnam	P 284983	7110

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EXAMINER

PATEL, MITAL B

ART UNIT PAPER NUMBER

3743

DATE MAILED: 10/22/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/090,173

Applicant(s)

GUNARATNAM ET AL.

Examiner

Mital B. Patel

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-67 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 62 and 63 is/are allowed.
- 6) ☒ Claim(s) 11-18, 20-61 and 64-67 is/are rejected.
- 7) ☒ Claim(s) 2-10 and 19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 09/504220.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,7,10. 6) ☐ Other:

DETAILED ACTION

Claim Objections

1. Claims 2-10 are objected to because of the following informalities: Claims 2-10 are dependent on canceled claim 1 and as such have not be considered on the merits. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 11, 12, 13, 28, 29, 30, and 64-67 are rejected under 35 U.S.C. 102(b) as being anticipated by Feeney (WO 87/01950).
4. **As to claims 11 and 64**, Feeney teaches a respiratory mask and headgear combination comprising a respiratory mask **1,2** having a rigid mask frame **3**, adjustable headgear **6** for securing the mask on a patient, the headgear including at least one attachment strap **see Fig.1**, the mask frame having rigidly secured thereto a rigid first connector **14**, further comprising a second connector **see Fig. 1**, adapted for releasable mating with the first connector and having first and second gripping surfaces positioned for gripping of the second connector between a thumb and finger of a patient's hand and release means positioned for operation by another finger of the patient's hand.

5. **As to claim 12**, Feeney teaches a combination wherein the first connector is a female connector integrally and rigidly formed with the mask frame.

6. **As to claim 13**, Feeney teaches a combination wherein the first and second connectors are spaced forwardly of the patient's face by the rigid mask frame.

7. **As to claim 28**, Feeney teaches a respiratory mask for use with a headgear having male connectors thereon, each of the male connectors including at least one resiliently biased locking element, the respiratory mask comprising a mask frame **3**; a pair of female connector portions **14** formed in one piece with the mask frame and being configured to receive the male connector portions therein.

8. **As to claim 29**, Feeney teaches a combination wherein the mask frame includes a front wall portion defining a forward end of the mask frame, the front wall portion having a circular gas inlet **8** aperture configured to connect to a gas delivery conduit, the mask frame including a pair of inclined side wall portions and a base portion, each of the side wall portions and the base portion having a portion thereof connected to the wall portion (**See Fig. 1**).

9. **As to claim 30**, Feeney teaches the combination wherein the mask frame includes a rim at rear edges of the inclined side wall portions and the base portion, the rim defining a rearward end of the mask frame and being configured to allow a cushion **2** to be attached thereto.

10. **As to claim 65**, Feeney teaches a combination wherein the respiratory mask is a nasal mask.

11. As to claim 66, Feeney teaches a combination wherein the mask assembly includes a frame, and the selected connector portion is provided in one piece with the frame.

12. As to claim 67, Feeney teaches a combination wherein the mask assembly includes a frame, and the selected connector portion is positioned adjacent a gas inlet aperture **8** of the frame.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 21, 39, 41, 47, 48, and 60 rejected under 35 U.S.C. 103(a) as being unpatentable over Feeney in view of Tuman (US 5205832).

15. As to claims 21, 39, 41, 48, and 60, Feeney teaches a respiratory mask and headgear combination a respiratory mask having a rigid mask frame **3**, adjustable headgear **6** for securing the mask on a patient, the headgear including at least one attachment strap **see Fig.1**, the mask frame having rigidly secured thereto a rigid first connector **14**, further comprising a second connector **see Fig. 1**, adapted for releasable mating with the first connector portion wherein the first connector portion is a female connector formed in one piece with the mask frame; and the second connector portion is a corresponding male connector. Feeney fails to specifically teach first and second

connector portions form a press-release connection between the mask frame and the strap. However, Tuman does teach the use of a press-release connection to provide a quick release mechanism and allow for easy adjustments. Therefore, it would have been obvious to one of ordinary skill in the art to replace the connector portions of Feeney with the press-release connection of Tuman to provide a quick release mechanism and allow for easy adjustments.

16. **As to claim 47**, the above combination teaches a combination wherein the first and second connectors are structured to be spaced forwardly of the patient's face by the rigid mask frame.

Double Patenting

17. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

18. Claims 11-12; 13; 14-18, 20; 21-22; 23; 24; 25; 26; 27; 28-32; 33-38; 39-40; 41-42; 43; 44; 45; 46; 47; 48-53; 54-59; 60-61; 64-65; and 67 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable

over claims 1; 1 and 6; 1-5; 1; 1-2; 1-3; 1-4; 1-5; 1-6; 7; 8; 9; 9; 1-2; 1-3; 1-4; 1-5; 1-5; 7; 8; 1; 1; and 7 respectively of U.S. Patent No. 6,374,826. Although the conflicting claims are not identical, they are not patentably distinct from each other because the more specific claims of U.S. Patent No. 6,374,826 anticipated the broader claims of the instant application, i.e., the patent claims anticipate the application claim. See *In re Goodman*, F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993).

Allowable Subject Matter

19. Claim 19 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
20. Claims 62 and 63 are allowed over the prior art of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mital B. Patel whose telephone number is 703-306-5444. The examiner can normally be reached on Monday-Friday (8:00 - 4:30).

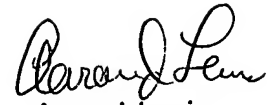
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 703-308-0101. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

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Aaron J. Lewis
Primary Examiner